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LOCAL VS. STATE CONSTABULARY.

In politics, as in industry, there is a constant conflict between tendencies toward centralization and toward decentralization. The coming legislative sessions promise a renewal of this struggle in various states, and even in Congress. How far changes in industrial and social conditions call for a readjustment of former landmarks, is strikingly illustrated by the suggestion, recently abandoned for party reasons, to take from the cities of New York the appointment and control of the city constabulary.

The political significance of this proposition is apt to be lost to view and obscured in the discussion of the constitutional principles involved. The proposed constabulary law is not without precedents. Boston, St. Louis, Fall River, Baltimore, San Francisco, Detroit and Denver, as well as numerous cities in Ohio and Kansas, have police not of their own choosing. Numerous decisions of state and national courts seem to show clearly that at the present time the appointment by states of local police commissioners is a question merely of political and social expediency, and not of constitutional right. Nevertheless, every successive encroachment is bitterly opposed and chiefly on constitutional grounds. What these grounds are is clearly set forth in a case recently argued before the Supreme Court of the State of Rhode Island. A restatement of that case, the arguments of counsels and the decision of the court may throw some light on the issue presented to vest the appointment of city police in a state authority.

In January, 1900, a bill was presented to the General Assembly of Rhode Island "to establish a Board of Police Commissioners for the City of Newport." This board was to be appointed by the governor with the advice and consent of the senate, and was in turn to appoint the chief of police. The bill was continued until the May session and passed May 31, "after a duly advertised and one of the largest attended public hearings held in recent years, at which hearing the Mayor of Newport was present and spoke."¹ Three commissioners were appointed, and on June 18 a chief of police was named.

The city of Newport *et al.* protested that the bill was unconstitutional on seven counts.² The essential objection was that "The act throughout infringes the rights of local self-government in the State of Rhode Island, enjoyed and preserved from the settlement of its first four towns to the adoption of its constitution, which the constitution recognizes, and on which it is built."

This involves the view, to adopt the language of the court, that "independent towns, governing themselves in all respects, formed

¹ Brief for respondents.

² Bill of Complaint, Newport *Mercury*, July 21.

the colony, in doing which they gave up none of their rights of self-government, that they never have given them up, and hence such rights are retained by the people." This view was clearly passed upon by Chief Justice Stiness in rendering the decision for the court. He traced the evolution of Rhode Island from a group of four independent local sovereignties in 1647 to a colony in whose general assembly power was concentrated by the charter of 1663. From 1663 to 1900 the assemblies had repeatedly passed laws affecting particular towns or cities. This evidence was adjudged to outweigh the unwritten theory of local self-government and to refute the claims of the petitioners for local independence. "The legislature has evidently assumed that local officers will not do their duty," said the Court, and ". . . our conclusion is that the right of a city to the sole control of its police force has not been so reserved as to make unconstitutional the appointment of a chief of police by commissioners," as contemplated by this act.

In support of the bill were cited numerous opinions handed down by justices of various state courts and of the United States courts, of which the following were the most important:

1. "A Municipal Corporation . . . is but a department of the State." *Barnes vs. District of Columbia*, 91 U. S. 544; *Mt. Pleasant vs. Beckwith*, 100 U. S. 524; *Williams vs. Eggleston*, 170 U. S. 310; *Metropolitan R. Co. vs. District of Columbia*, 132 U. S. 8.

2. "The police perform state functions and are state agencies and instrumentalities." *Burch vs. Hardwick*, 30 Grattan (Va.) 34; *Chicago vs. Wright*, 69 Illinois 326; *Cobb vs. City of Portland*, 55 Maine 383; *Kelly, Administrator, vs. Cook*, Supreme Court, Rhode Island, October 27, 1898. *General Laws Rhode Island*, Chap. CII, Section 17; *Beer Company vs. Massachusetts*, 97 U. S. 25-33.

3. "Acts creating boards of police commissioners are constitutional." 1857 (New York City), *People vs. Draper*, 15 N. Y. 544; 1867 (New York City), *People vs. Shepard*, 37 N. Y. 286; 1860-1900 (Baltimore), *Mayor vs. Police Commissioners*, 15 Md. 376; 1861-1900 (St. Louis), *State vs. County Court of St. Louis*, 34 Mo. 567; 1865-1900 (Detroit), *People vs. Mahoney*, 13 Mich. 500; *People vs. Hurlburt*, 24 Mich. 81, 103; *Park Commissioners vs. Auditors*, 28 Mich. 236; *Allor vs. Wayne*, 43 Mich. 76; *Metropolitan Police Board vs. Wayne Auditors*, 68 Mich. 580; 1876-1900 (Ohio), *General Law, State vs. Covington*, 29 Ohio 113; 1885-1900 (Boston), *Commonwealth vs. Plaisted*, 148 Mass. 386; 1888-1900 (Kansas), *General Law, State vs. Hunter*, 38 Kansas 581; 1894-1900 (Denver), *Trimble vs. People*, 19 Colorado 196.

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